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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 4th July, 2019

+ CRL.A. 788/2000

KISHAN CHAND VERMA Appellant
Through: Mr. Sudarshan Rajan and Md.
Qamar, Advocates

versus

STATE THR. C.B.I. Respondent
Through: Mr. Nikhil Goel, SPP, CBI with
Mr. Dushyant Sarna, Advocate

+ CRL.A. 795/2000 and Crl. M.A. 384/2011

PAWAN KUMAR SHARMA Appellant
Through: Mr. Sudarshan Rajan and Md.
Qamar, Advocates

versus

STATE THR. C.B.I. Respondent
Through: Mr. Nikhil Goel, SPP, CBI with
Mr. Dushyant Sarna, Advocate

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The appellants Pawan Kumar Sharma (A1) and Kishan Chand Verma (A2) were employed with Delhi Development Authority (DDA) in the capacity of Junior Engineer (JE) during

the year 1994. On 22.09.1994, they were arrested by Inspector RVS Lohmor (PW6) of Central Bureau of Investigation (CBI) in the course of investigation into first information report (FIR) vide RC No.68(A)/94-DLI registered on the complaint (Ex. PW1/A) lodged by Arvind Kumar Khanna (PW1) earlier during the day. The allegations levelled against the appellants were that they together had approached the complainant (PW1) on 21.09.1994 demanding illegal gratification of Rs.1,000/- from him for trashing a complaint received from one Ram Lal respecting unauthorized construction in shop no.14A/1, DDA Market, Lawrence Road, Delhi and that, as arranged, A2 had come to the said shop of the complainant at about 4.00 p.m. on 22.09.1994 to reiterate the said demand and accepted the money (trap money) from the complainant, whence he was caught red handed immediately thereafter.

2. Both the appellants were put on trial by charges framed on 04.01.1996 by the Special Judge (Prevention of Corruption Act). A common charge of criminal conspiracy punishable under Section 120 B of Indian Penal Code, 1860 (IPC) for commission of offences under Section 7 and 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988 (P.C. Act) was framed against both of them. Separate charges for substantive offences under Section 7 and 13 (2) read with Section 13(1)(d) of the P.C. Act were framed against A2. Both the appellants contested and pleaded not guilty. The trial

followed, it resulting eventually in judgment dated 29.11.2000 of the Special Judge holding the appellants guilty, as charged. By order dated 30.11.2000, the Special Judge awarded rigorous imprisonment for three years and six months with fine of Rs.15,000/- against A1 for offence under Section 120B IPC read with Section 7 and 13 (1) (d) punishable under Section 13 (2) of P.C. Act. A similar sentence was awarded for the said offence against A2 who was also additionally awarded rigorous imprisonment for three years six months with fine of Rs.15,000/- each on the other two counts.

3. Aggrieved by the judgment of conviction, and the order on sentence, passed against them, these appeals were presented in the year 2000. Their turn for hearing and final adjudication has come up almost nineteen years thereafter.

4. The complaint of unauthorized construction on the basis of which the appellants had allegedly approached the complainant on 21.09.1994 with the demand for illegal gratification has been brought on record as a document which is part of file (Ex. PW6/C) that was seized from the residence of A1, in the wake of trap proceedings at the shop of the complainant where A2 had been apprehended in the evening of 22.09.1994. The document purportedly sent as a complaint by one Ram Lal, resident of C-1/44, Lawrence Road, Delhi-35 is Exhibit PW9/B2. It is addressed to Dy. Director (CE) of DDA. There is an endorsement on the top of the said document

requiring necessary action including immediate removal of the additional shutter, the complaint having been marked to the Assistant Engineer (AE).

5. It has been the case of A1 that he was the jurisdictional junior engineer responsible for the area where the shop was located and that the aforesaid complaint was made over to him for necessary action in discharge of his official duties. The fact that the responsibility for checking unauthorized construction of such nature in the area in question was part of the responsibilities of A1 is confirmed by RS Phachauri, Assistant Engineer (PW-5), in his evidence. It may be added here that the evidence of Mr. Darshan Singh, another Assistant Engineer (PW-8), does seem to indicate that the responsibilities of A2, also a junior engineer with DDA, pertained to the adjoining territorial jurisdiction.

6. In his complaint (Ex. PW1/A), which was translated into the FIR (Ex. PW6/A), PW1 himself had indicated that when the complaint of Ram Lal (Ex. PW9/B2) was shown to him at the time of demand for illegal gratification raised on 21.09.1994, he had protested by saying that no person by such description was residing at the address given in the complaint. From this, it has to be inferred that the complainant was well aware throughout that Ram Lal was a non-existent person, as has been the case for prosecution.

7. It may be mentioned here that the investigation of CBI proceeded on the assumption that the complaint purportedly of Ram Lal had been dishonestly fabricated by the appellants so as to extract illegal gratification from the complainant. The investigating agency went to the extent of securing the specimen / admitted handwritings and getting them compared by a Government Examiner of Questioned Documents (GEQD) of Central Forensic Science Laboratory (CFSL). The evidence which was presented at the trial included the opinion given by Mr. J.K. Samual (GEQD) (PW9) after the comparison of the questioned material.

8. The case of CBI based, *inter alia*, on handing over memo (Ex. PW1/B) and recovery memo (Ex. PW1/C), in addition to search-cum-seizure memo (Ex. PW6/B), house search-cum-seizure memo (Ex. PW1/DB), and search-cum-seizure memo (Ex. PW1/DC) has been that after registration of the FIR, two independent witnesses viz. Jagjit Singh (PW2) and S.N. Sharma (PW7), both government employees, were joined, the former (PW2) having been instructed to be a shadow witness and the latter as the recovery witness. There were certain other officials of CBI who had joined, besides the trap laying officer (TLO), in the process. It has been the case of the complainant, and the CBI, that both the accused persons had paid a visit to the shop of the complainant on 21.09.1994, the exchange where had indicated that A2 would be paying another visit to the shop of

the complainant (on behalf of A1) in the afternoon of 22.09.1994 to collect the money demanded as Rs.1,000/-. It is stated that the complainant had arranged ten currency notes (Ex. P1 to P10) each of the denomination of Rs.100/-, which were treated with phenolphthalein powder in the pre-trap preparatory proceedings in the presence of two independent witnesses and the complainant, suitable instructions given to all concerned and the trap money so treated was handed over to the complainant to be passed on in the event of specific demand during the trap. It is the case for CBI that the trap party, including the shadow witness and the recovery witness, had gone to the vicinity of the shop of the complainant and had parked the vehicles at some close distance, the complainant and the shadow witness having proceeded the shop, rest of the team including recovery witness converging thereupon after receiving the pre-appointed signal given by the shadow witness. It is the case for the prosecution that A2 had come to the shop and had reiterated the demand upon which the complainant had given money to him that was received by A2 and kept in the upper pocket of his shirt (Ex. P11) from where it was recovered by the recovery witness, the subsequent proceedings having been recorded in the recovery memo. It is also the case for the prosecution that A2, upon being interrogated, had disclosed that he had come to collect the money at the instance of A1 and further that the police party thereafter went to the house of A1 from where he was arrested,

the file containing the purported complaint of Ram Lal having been seized from there.

9. Curiously, for some reasons which are not clearly brought out, the investigating agency proceeded on the theory that the complaint of Ram Lal was a fabricated document. The suspicion of the investigating officer that it had been written by A1, however, did not pass the muster of scrutiny by GEQD. The report of GEQD of CFSL demonstrates this gap. Nonetheless, the trial court has accepted the allegation of the prosecution that the complaint of Ram Lal was a fabricated document. This court, however, finds the conclusion in this regard to be baseless. It may be that no person by the name of Ram Lal existed at the given address. But then, in order to prove that the complaint had been fabricated by these public servants, with a design to extort money, something more than mere suspicion had to be furnished. As noted earlier, there is endorsement purportedly made by a superior officer on the complaint in the name of Ram Lal making over the document to Assistant Engineer. Some official witnesses should have been brought in to disprove the facts to that effect. In absence of such evidence, a public servant who was otherwise responsible for carrying out inspection against unauthorized construction cannot be suspected of fabrication for the purposes of extortion. He was discharging his official duties in the regular course of his role and had purportedly the possession of the file. The

presumption of official acts being lawful and legitimate had to be displaced by some concrete evidence showing facts to the contrary.

10. Before coming to scrutiny of the evidence, particularly of the complainant (PW1), the shadow witness (PW2), recovery witness (PW7) and the TLO (PW6), it is essential to take note of the fact that the complainant is not a novice in the matter of taking the assistance of anti-corruption agencies for action against public servants. He admitted during the course of his cross-examination that he had had the occasion to lodge complaints against certain public servants vis-à-vis the user, services, etc. respecting the shop in question in the past. He specifically admitted to having lodged complaint against two DDA officials K.S. Parmani and Ashish Kumar Malik, both junior engineers of DDA, vide FIR no.13/1992 of the Anti Corruption Branch (ACB) of the Government of NCT of Delhi, and later against officials of the House Tax Department of Municipal Corporation of Delhi (MCD), the first concerning demand of illegal gratification in the context of alleged unauthorized construction at first floor of his shop, and the latter on account of failure to mutate the shop in the name of his wife. He also spoke of complaint having been lodged by him against officials of Mahanagar Telephone Nigam Ltd. (MTNL), concerning an installation of telephone for running a public call office (PCO) to provide services in the nature of STD and ISD

in the shop. The particulars or result of the case against the said officials are not available.

11. It may be noted that the evidence of record does show that the complainant has been running a PCO booth within a cabin inside the shop in question. The reference to FIR 13/1992 of ACB as appearing in his cross-examination seems to be incorrect. It appears that the correct particulars of the FIR were no.13/1996 of the ACB, the charge-sheet filed therein having resulted in a criminal case no.38/99, which was decided by the court of Special Judge on 09.10.2006. The appellants have also brought on record copy of judgment dated 16.07.2003 rendered in criminal case 26/1998 in another CBI prosecution relating to RC no.13A/97-DLI of CBI. The said case was directed against Inspector Anil Kumar Gupta (A1) and Shri Bhagwan (A2), both officials of erstwhile Delhi Electricity Supply Undertaking (DESU), the allegations being that they had illegally demanded gratification in the context of application for power connection in respect of the shop in question. The said case resulted in judgment of acquittal rendered on 16.07.2003.

12. It was suggested to PW1, during his cross-examination, that he was in the habit of lodging false complaints. Of course, he denied the said suggestion as incorrect. As is clear, both the above mentioned cases, which resulted in acquittal, relate to period subsequent to the lodging of the present case.

13. The appellants have brought on record copies of the above mentioned judgments of acquittal on 16.05.2019, reiterating the contention that the complainant (PW1) is a person whose credibility is low and who has been disbelieved and / or adversely commented upon in the past. The copies of the said previous judgments in the two said cases were taken on record and the learned Special Public Prosecutor for CBI was called upon to confirm and make a formal report as to whether the said judgments had attained finality or if any challenge thereto is pending. The learned Special Public Prosecutor has informed the court today that there is no record of any appeal having been preferred against the above mentioned judgment of acquittal, his submission being that the court may proceed on the assumption that the said judgments have attained finality.

14. It may be noted here that the veracity of the complainant of the present case, who was also the complainant in the said previous cases against public servants, the allegations levelled by him in the past also being of demand and acceptance by public servants of illegal gratification, has indeed come up for serious adverse comments in the said judgments, to the extent of his testimony having been branded as one based on “*deliberate falsehood*”, the special judge rendering the judgment on 09.10.2006 even initiating action against him under Section 344 Cr. PC.

15. Against the above backdrop, the learned Special Public Prosecutor for CBI fairly conceded that in the face of such adverse comments on his credibility, it is essential that the evidence of the complainant in the present case is subjected to closer scrutiny – even more acute than what would ordinarily be the approach of the court. It is in this light that the evidence on record fails to pass the muster, doubts lurking as to the extent of truthfulness in the narration of sequence of events, in general, and the trap proceedings, in particular, the judicial conscience of this court not being satisfied as to the correctness of the finding of guilty.

16. The purported complaint (Ex.PW9/B-2) of Ram Lal carried the allegations of unauthorized construction in the shop by the complainant. Neither in the complaint to CBI nor in his evidence, the complainant joined issue by claiming that the allegations of unauthorized construction were false. Similar misconduct on his part has been the basis of demands for illegal gratification by public servants of other State agencies which were subject matter of prosecution at his instance in the past. There has been no investigation into such illegalities attributed to him as had given the alleged occasion for bribes being demanded. In these circumstances, the argument of the appellants here that the complainant is in the habit of framing public servants so as to deter them from discharging their responsibilities cannot be lightly brushed aside.

17. As was highlighted during the course of hearing, with reference to the testimony of the complainant (PW1), his deposition does not fully match with the complaint leading to registration of FIR, or the statement under Section 161 of the Code of Criminal Procedure, 1973 (Cr. PC) recorded in the course of investigation. It may be noted that in the complaint, PW1 had attributed the demand to both the appellants at the time of their visit to his shop on 21.09.1994, it being added that A1 had indicated at that stage that A2 would be coming on the next date to collect the money on his behalf. In the court, the complainant testified that both the accused persons had raised the demand and further that it was A2 who had left the place stating that “they” – indicating both, would be coming on the next day to collect the money at 3.30 p.m. on 22.09.1994. Noticeably, in the complaint, no specific time of the visit expected to be made on 22.09.1994 was indicated.

18. Both the complainant (PW1) and the shadow witness (PW2) had narrated events from the time of pre-trap preparatory proceedings right through laying of trap in the shop of the complainant wherein they were supposedly present in the company of each other most of the time. According to their version, as indeed that of the TLO (PW6), the trap party had gone to the locality where the shop of the complainant is situate having parked the vehicles at a little distance. It is from the place where the vehicles were parked, that the complainant and

the shadow witness were sent towards the shop first. The shadow witness had been asked, as per the evidence, to project himself as a customer who was coming to the shop of the complainant for using the PCO to make a telephone call.

19. For some reasons, which are not fully explained, the shadow witness is stated to have reached the shop ahead of the complainant. As per the evidence, A2 was already present inside the shop at that point of time. The complainant would follow him into the shop a little later. While the complainant would not specify the time gap between arrival of shadow witness at the shop and his own, the latter (shadow witness) would put it as 10-20 minutes. The conversation regarding reiteration of the demand and handing over of the money is narrated by both of them with reference to the time apparently after the complainant had come to the shop. PW1 (the complainant) speaks about an endeavour made by him to renegotiate the terms by offering initially an amount of Rs.500/-, having taken out of his pocket five currencies notes from out of ten which had been used as the trap money. According to him, A2 had declined to accept half of the money that had been demanded insisting that the entire be paid. He would also state that he had then questioned A2 as to the guarantee against A1 returning with the complaint for action inspite of such payment being made, A2 responding by words to the effect of assurance to the contrary. This exchange, it was demonstrated during the

course of cross-examination, is something which was amiss from the narration in the statement under Section 161 Cr. PC (Ex. PW1/DA) that had been recorded during investigation. Noticeably, the shadow witness would also not narrate this to be the conversation which was exchanged between the complainant and A2. It emerges that PW1 (complainant) has indulged in an endeavour to improve upon the original version which tells poorly on the credibility of his word.

20. The sequence narrated by the shadow witness (PW2) turns out to be quite unusual and *per se* not believable. As mentioned earlier, he was sent as a witness with the objective of hearing the conversation between the complainant and the public servant who was expected to come to collect the bribe that had been demanded. His visit to the shop was for the ostensible purpose of using the PCO. The use of the PCO telephone facility would confine him inside a cabin that would infact render it almost difficult for him to overhear the conversation or see the exchange. Be that as it may, it is strange that the complainant would choose to follow him into the shop after twenty minutes. The amount of time taken by the complainant to reach the shop after the shadow witness who was visiting there only as a customer for using a telephone is unnatural. In the usual scheme of things, the complainant would have been anxious to reach the place on the close heels of

the shadow witness so that the exchange could be easily witnessed by an independent person.

21. Be that as it may, the shadow witness also told the court during his statement that when he had reached the shop, the complainant (the shop owner) not being present, he was met by his father, at least one more person (identity not explained) also being around. The father of the complainant on being approached by the shadow witness for use of the telephone informed him that he could not do so since the phone was out of order. A customer who had come to the shop for such purposes having been told that the phone he wanted to use was out of order would generally be expected to move away to some other similar facility in the area. The public servant (A2) whose conduct was to be tested during the trap was present in the shop at that point of time. The shadow witness testified that inspite of he being told that the phone was out of order, he had remained present inside the shop. This is unusual and not believable on its face. It is his own version that the complainant came almost twenty minutes after such exchange with the father. Such long wait by a customer who had been told that the phone was not available would have rendered him unwelcome. His continued presence was bound to arouse suspicion. If a stranger was insisting to remain there for no purpose, the suspect would have added reasons to be more guarded. Yet, the shadow witness wants the court to believe that he had waited till

the complainant had come in, asking his father to let the shadow witness use the phone available in the shop, he having continued to see further exchange between the complainant on one hand and A2 on the other.

22. The shadow witness did not know the complainant or his father from before. He had come to the shop for the first time, his purpose being only to make one telephone call. Yet, he goes on to state that he had remained present during the entire exchange when money was demanded by A2 and handed over by the complainant to him. There is no clarity if he at all used the phone to make the call which was the declared purpose of his visit to the shop. A cold drink was also called for and, as per the shadow witness, it was also forced upon him. This sequence of events is not only out of ordinary but wholly unusual, doubtful and suspect, particularly because there is no justification for such hospitality being extended to a stranger, the public servant if the purpose of his visit was illicit expected to be wary of someone else witnessing the exchange.

23. The recovery witness (PW7) renders the whole sequence set out in the prosecution case further doubtful by stating that he along with the other members of the trap party had entered the shop within five minutes of the vehicles being parked at some distance away, upon the pre-determined signal being given (by the shadow witness). If the narration given by the shadow witness is correct, the signal could not have come about at least

for about 25-30 minutes of the arrival of the trap party in the vicinity. The receiving of the signal within five minutes does not jell with the sequence narrated by the shadow witness or for that matter the complainant.

24. In the face of above serious contradictions in the prosecution evidence, there is no certainty as to the extent of truthfulness of the charge brought against the public servants. The benefit of doubts arising consequently will have to be extended to them. Ordered accordingly.

25. For above reasons, the impugned judgment dated 29.11.2000 and order on sentence dated 30.11.2000 of the Special Judge are set aside. The appellants are acquitted.

26. The appeals and the application filed therewith are disposed of in above terms.

R.K.GAUBA, J.

JULY 04, 2019

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